

REMARKS/ARGUMENTS

The Official Action has been carefully considered, and the Examiner's comments are duly noted. Reconsideration of this Application in view of the Amendments for the specification and claims is respectfully solicited.

With respect to the specification, the three paragraphs have been appropriately amended and no new matter has been added, and the amendments are derived from a reading of the drawings. If there is any problem, the Examiner is respectfully asked to provide Applicant's attorney with a courtesy telephone call to take care of this matter.

It is noted that claims 3, 7, 14 and 18-20 are objected to and contain allowable subject matter. The subject matter of these claims are now rewritten in independent form and are the subject matter of new claims 21 to 25.

The claims now in this Application are 1-2, 4-6, 8-13, 15-17, 19 and 21-25. Cancelled claims subject matter 3, 7, 14, 18 and 20 have been replaced with new claims 21-25.

Claims 1, 2, 4, 6, 8-10, 12, 13 and 17 were rejected as being anticipated under 35 U.S.C. 102(b) by Green U.S. Patent 7,025,232. It is the Examiner's contention that the Green dispensing device is capable of being used as a combined tongue depressor and oral spray mechanism if one would so desire.

It should be noted that claim 1 and all of the claims dependent thereon has been amended to call for positively a longitudinal tube member which includes a tongue depressor portion, as well as an inner passageway.

Green does not teach nor suggest a tongue depressor use but teaches away from this concept. It is only with the benefit of this Application that the Examiner has come up with the idea that it could be used as tongue depressor. If Applicant had argued that it could also be used with an outer body spray – which Applicant did not – perhaps the Examiner would use the argument “if one would so desire”.

The Examiner's attention is specifically directed to Column 2, lines 25-30 – for dispensing the liquid candy in the mouth of the user --. In Applicant's claimed invention, the material is intended to reach the throat cavity and not to be dispersed throughout the mouth cavity. This is not the intention of the prior art. There is a distinction between the throat cavity and the mouth. Clearly, there is no concept nor intention of having the candy liquid reach the throat cavity because the taste buds of an individual are on the tongue which is part of the mouth and not the throat cavity. Basically, the use of Applicant's invention would destroy the purpose of Green, and Green would fail to accomplish Dr. Katz's purpose by a failure to reach the throat cavity so that the Green device would save no useful purpose except as a candy dispenser. All Green wants is to reach the taste buds, not the throat cavity.

Further, a tongue depressor is not a "fun" device, and the primary intent of Green is a "fun" device, see column 2, lines 20-24. Moreover, Green is clearly non-analogous art.

Therefore, claim 1 and all claims dependent thereon are patentable and allowable over the prior art cited and applied and the prior cited but not applied.

Claim 2 is allowable for the same reasons as claim 1.

Claim 4 is additionally allowable because the exit means is now structurally related to the tongue depressor.

Claims 5, 15 and 16 were rejected as obvious and therefore unpatentable under 35 U.S.C. 103(a) over Green '232 in view of Margulis U.S. Patent No. 6,067,936. For the sake of the record it should be noted that the device of this patent is intended for use solely with Aquatic animals, namely – fish --. Regardless of whether fish have a throat cavity or, for that matter, a throat cavity equivalent to a human throat cavity, there is no suggestion anywhere that curved member 18 or as referred to "pipe 18" can be or for that matter can be used for a tongue depressor. Therefore, no combination of Green and Margulis would arrive at Applicant's claimed invention, regardless of how combined.

According to the Examiner, the Margulis reference was combined with Green to show the plurality of nozzles (20b-2d) useable with the Green dispensing apparatus to achieve a desired spray effect, and for this reason the Examiner considered the previous claim 5 to be obvious. Claim 5 for the aforesaid reasons, as well as its dependence on claim 1, is not obvious.

To distinguish further from the aforesaid combination, claim 5 has been amended to relate the openings to the end of the tongue depressor. Since neither Green nor Margulis show or teach a tongue depressor, or the specific purpose to reach the throat cavity and not provide a spray for the mouth portion or tongue, these two references taken either singly or combined in any valid combination do not render the subject matter of claim 5, as amended, obvious.

Claims 6-10 are allowable for the same reasons as claim 1.

Claim 11 was rejected as obvious under 35 U.S.C. 103(a) for the inclusion of the desired size in order to avoid harm or injury to an individual user. While Applicant specifically disagrees with the Examiner's interpretation of In Re Boesch and Slaney, 205 U.S.P.Q. 215 (CCPA 1980), 617 F2d, 272, claim 11 has been amended to include the telescopic arrangement which, when controlled by an individual user, will accomplish the same purpose as the previous limitations.

For the sake of the record, it should be noted that Boesch is completely unrelated to the teachings of this Application and the subject matter thereof.

In Re Boesch and Slaney, 205 U.S.P.Q. 215 (CCPA 1980), 617 F2d, 272. This decision does not apply to this limitation and the argument is being submitted because Applicant may decide to reinsert the objected to claim.

Specifically, this case is concerned with metallurgy and is concerned solely with the discovery of the optimum value of a result effective variable in a known process that is ordinarily within the skill of the art.

Clearly, this decision relies on the basis that a particular selected value was chosen without establishing a eutectic point or some other point to establish unexpected utility. In the present Application, the three inches was not an arbitrary selection or an experimental selection, but an understanding by a trained medical individual, which the inventor is, that harm is possible if the length is improper and the device is not properly handled. This is the reason that "three inches" was used in claim 11 to provide a clear teaching of the desirability of this particular size, and therefore it was not arbitrarily selected to distinguish from any prior art.

Turning now to claims 12, 13 and 17 which were also rejected on the basis of Green under 35 U.S.C. 102(b), claim 12 was amended to call for a combined tongue depressor and oral spray mechanism, and further defining the mechanism with a substantially flat surface for engagement with the top surface of the tongue to prevent any part or portion of the tongue from interfering with the spray discharged from the nozzle as the distal end. Clearly, Green does not have any contemplation of this feature or the possible utility thereof. Moreover, none of the references of record cited and applied, cited and not applied, have this particular concept or the features to carry out the purpose of this invention. Therefore, claim 12 is allowable over all of the prior art of record.

Claims 13 and 17 are also allowable for the same reasons as claim 12.

With respect to claims 15 and 16 which were rejected on the basis of Green and Margulis as being obvious under 35 U.S.C. 103(a), while claim 15 is considered to be allowable for the same reasons as claim 12, claim 15 was amended to set forth that the plurality of openings are peripherally arranged around and spaced a central axis of the longitudinal tube, as best seen 20b, 20c and 20d, are arranged along and not about the central axis of the tube, or at least the portion of the front and side openings. Fig. 2b shows one opening axially aligned with the central axis if there is one on a curved non-straight member.

Claim 16 further calls for the openings to be inwardly displaced the outer rim portion clearly distinguishing from all the shown embodiments.

Claim 19 was amended to render it dependent on new claim 24 which is based on a combination of the subject matter of former claims 12 and 14, and the Examiner has indicated that claim 14 contains allowable subject matter. A careful analysis of the subject matter of claim 14 and all the cited prior art indicates that the subject matter of claim 24 is allowable over all of the cited prior art.

Claim 19 is dependent on claim 24 and is allowable for the same reasons as claim 24.

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If there are any points outstanding, the Examiner is respectfully asked to call Applicant's attorney to do what is necessary to place the Application into condition for allowance.

Early and favorable reconsideration is respectfully solicited.

Respectfully submitted,

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